

separate dispensing fee will be recognized.

(b) In determining whether a dispensing fee is reasonable, the Secretary will take into account:

(1) Cost components such as overhead, professional services, and profits,

(2) Payment practices of third-party payment organizations, including other Federal programs such as titles XVIII and XIX of the Social Security Act; and

(3) Any surveys by States, universities or others of costs of pharmacy operations and the fees charged in the particular area.

(c) A certification by a prescriber, pursuant to paragraph (a) of this section, that a brand of drug is medically necessary for a particular patient shall be in the prescriber's own handwriting, in such form and manner as the Secretary may prescribe. An example of an acceptable certification is the notation "brand necessary". A procedure for checking a box on a form will not constitute an acceptable certification.

[40 FR 34514, Aug. 15, 1975, as amended at 81 FR 3006, Jan. 20, 2016]

### Subpart F—Promoting Objectivity in Research

AUTHORITY: 42 U.S.C. 216, 289b-1, 299c-4; Sec. 219, Tit. II, Div. D, Pub. L. 111-117, 123 Stat. 3034.

SOURCE: 76 FR 53283, August 25, 2011, unless otherwise noted.

#### § 50.601 Purpose.

This subpart promotes objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct, and reporting of research funded under Public Health Service (PHS) grants or cooperative agreements will be free from bias resulting from Investigator financial conflicts of interest.

#### § 50.602 Applicability.

This subpart is applicable to each Institution that is applying for, or that receives, PHS research funding by means of a grant or cooperative agreement and, through the implementation of this subpart by the Institution, to each Investigator who is planning to

participate in, or is participating in, such research; provided, however, that this subpart does not apply to SBIR Program Phase I applications. In those few cases where an individual, rather than an Institution, is applying for, or receives, PHS research funding, PHS Awarding Components will make case-by-case determinations on the steps to be taken, consistent with this subpart, to provide a reasonable expectation that the design, conduct, and reporting of the research will be free from bias resulting from a financial conflict of interest of the individual.

#### § 50.603 Definitions.

As used in this subpart:

*Disclosure of significant financial interests* means an Investigator's disclosure of significant financial interests to an Institution.

*Financial conflict of interest (FCOI)* means a significant financial interest that could directly and significantly affect the design, conduct, or reporting of PHS-funded research.

*FCOI report* means an Institution's report of a financial conflict of interest to a PHS Awarding Component.

*Financial interest* means anything of monetary value, whether or not the value is readily ascertainable.

*HHS* means the United States Department of Health and Human Services, and any components of the Department to which the authority involved may be delegated.

*Institution* means any domestic or foreign, public or private, entity or organization (excluding a Federal agency) that is applying for, or that receives, PHS research funding.

*Institutional responsibilities* means an Investigator's professional responsibilities on behalf of the Institution, and as defined by the Institution in its policy on financial conflicts of interest, which may include for example: activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards.

*Investigator* means the project director or principal Investigator and any other person, regardless of title or position, who is responsible for the design,

conduct, or reporting of research funded by the PHS, or proposed for such funding, which may include, for example, collaborators or consultants.

*Manage* means taking action to address a financial conflict of interest, which can include reducing or eliminating the financial conflict of interest, to ensure, to the extent possible, that the design, conduct, and reporting of research will be free from bias.

*PD/PI* means a project director or principal Investigator of a PHS-funded research project; the PD/PI is included in the definitions of senior/key personnel and Investigator under this subpart.

*PHS* means the Public Health Service of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated, including the National Institutes of Health (NIH).

*PHS Awarding Component* means the organizational unit of the PHS that funds the research that is subject to this subpart.

*Public Health Service Act* or *PHS Act* means the statute codified at 42 U.S.C. 201 *et seq.*

*Research* means a systematic investigation, study or experiment designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research (e.g., a published article, book or book chapter) and product development (e.g., a diagnostic test or drug). As used in this subpart, the term includes any such activity for which research funding is available from a PHS Awarding Component through a grant or cooperative agreement, whether authorized under the PHS Act or other statutory authority, such as a research grant, career development award, center grant, individual fellowship award, infrastructure award, institutional training grant, program project, or research resources award.

*Senior/key personnel* means the PD/PI and any other person identified as senior/key personnel by the Institution in the grant application, progress report, or any other report submitted to the PHS by the Institution under this subpart.

*Significant financial interest* means:

(1) A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

(i) With regard to any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds \$5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

(ii) With regard to any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds \$5,000, or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest); or

(iii) Intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.

(2) Investigators also must disclose the occurrence of any reimbursed or sponsored travel (*i.e.*, that which is paid on behalf of the Investigator and not reimbursed to the Investigator so that the exact monetary value may not be readily available), related to their institutional responsibilities; provided, however, that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education. The Institution's FCOI policy

will specify the details of this disclosure, which will include, at a minimum, the purpose of the trip, the identity of the sponsor/organizer, the destination, and the duration. In accordance with the Institution's FCOI policy, the institutional official(s) will determine if further information is needed, including a determination or disclosure of monetary value, in order to determine whether the travel constitutes an FCOI with the PHS-funded research.

(3) The term *significant financial interest* does not include the following types of financial interests: salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution, including intellectual property rights assigned to the Institution and agreements to share in royalties related to such rights; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles; income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education; or income from service on advisory committees or review panels for a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

*Small Business Innovation Research (SBIR) Program* means the extramural research program for small businesses that is established by the Awarding Components of the Public Health Service and certain other Federal agencies under Public Law 97-219, the Small Business Innovation Development Act, as amended. For purposes of this subpart, the term SBIR Program also includes the Small Business Technology

Transfer (STTR) Program, which was established by Public Law 102-564.

**§ 50.604 Responsibilities of Institutions regarding Investigator financial conflicts of interest.**

Each Institution shall:

(a) Maintain an up-to-date, written, enforced policy on financial conflicts of interest that complies with this subpart, and make such policy available via a publicly accessible Web site. If the Institution does not have any current presence on a publicly accessible Web site (and only in those cases), the Institution shall make its written policy available to any requestor within five business days of a request. If, however, the Institution acquires a presence on a publicly accessible Web site during the time of the PHS award, the requirement to post the information on that Web site will apply within 30 calendar days. If an Institution maintains a policy on financial conflicts of interest that includes standards that are more stringent than this subpart (e.g., that require a more extensive disclosure of financial interests), the Institution shall adhere to its policy and shall provide FCOI reports regarding identified financial conflicts of interest to the PHS Awarding Component in accordance with the Institution's own standards and within the timeframe prescribed by this subpart.

(b) Inform each Investigator of the Institution's policy on financial conflicts of interest, the Investigator's responsibilities regarding disclosure of significant financial interests, and of these regulations, and require each Investigator to complete training regarding the same prior to engaging in research related to any PHS-funded grant and at least every four years, and immediately when any of the following circumstances apply:

(1) The Institution revises its financial conflict of interest policies or procedures in any manner that affects the requirements of Investigators;

(2) An Investigator is new to an Institution; or

(3) An Institution finds that an Investigator is not in compliance with the Institution's financial conflict of interest policy or management plan.